

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
GISELLE FRITZ f/k/a GISELLE CARTER, EVAN DAVIS,  
JASON SPIEGEL-GROTE, and PATRICIA CASERTANO,  
on behalf of themselves and all others similarly situated,

Civil Action No.:  
11-CV-3300 (FB) (VVP)

Plaintiff,

-against-

RESURGENT CAPITAL SERVICES, LP, LVNV FUNDING,  
LLC, ALEGIS GROUP, LLC, MEL S. HARRIS AND  
ASSOCIATES, LLC, DAVID WALDMAN, and  
RESURGENT CAPITAL SERVICES, LLC

**THE RESURGENT  
DEFENDANTS' ANSWER  
TO SECOND-AMENDED  
COMPLAINT AND  
JURY DEMAND**

Defendants.

-----X  
Defendants, Resurgent Capital Services, LP, LVNV Funding, LLC, Alegis Group, LLC  
and Resurgent Capital Services, LLC (hereinafter, collectively, the "Resurgent Defendants"), by  
and through their attorneys, Kaufman Dolowich & Voluck, LLP, respond to the allegations in the  
Second-Amended Complaint and Jury Demand (hereinafter the "Complaint") as follows:

**AS TO JURISDICTION AND VENUE**

1. Deny the allegations set forth in Paragraph "1" of the Complaint.
2. Neither admit nor deny the allegations set forth in Paragraph "2" of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph "3" of the Complaint.
4. Deny the allegations set forth in Paragraph "4" of the Complaint, except admit that LVNV Funding, LLC is a limited liability corporation organized under the laws of the State of Delaware.

5. Deny the allegations set forth in Paragraph “5” of the Complaint, except admit that Resurgent Capital Services, LP is a limited partnership organized under the laws of the State of Delaware.

6. Deny the allegations set forth in Paragraph “6” of the Complaint, except admit that Resurgent Capital Services, LLC is a limited liability corporation organized under the laws of the State of Delaware.

7. Deny the allegations set forth in Paragraph “7” of the Complaint, except admit that Alegis Group, LLC is a limited liability corporation organized under the laws of the State of Delaware.

8. Deny the allegations set forth in Paragraph “8” of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “9” of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “10” of the Complaint,.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “11” of the Complaint.

**AS TO THE NATURE OF CLAIMS**

12. Deny the allegations set forth in Paragraph “12” of the Complaint.

13. Deny the allegations set forth in Paragraph “13” of the Complaint.

14. Deny the allegations set forth in Paragraph “14” of the Complaint.

15. Deny the allegations set forth in Paragraph “15” of the Complaint.

16. Deny the allegations set forth in Paragraph “16” of the Complaint.

17. Deny the allegations set forth in Paragraph “17” of the Complaint.

18. Deny the allegations set forth in Paragraph “18” of the Complaint.

19. Deny the allegations set forth in Paragraph “19” of the Complaint.

20. Deny the allegations set forth in Paragraph “20” of the Complaint.

21. Deny the allegations set forth in Paragraph “21” of the Complaint.

22. Neither admit nor deny the allegations set forth in Paragraph “22” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

23. Neither admit nor deny the allegations set forth in Paragraph “23” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

24. Neither admit nor deny the allegations set forth in Paragraph “24” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “25” of the Complaint.

26. Neither admit nor deny the allegations set forth in Paragraph “26” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

27. Deny the allegations set forth in Paragraph “27” of the Complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “28” of the Complaint.

29. Deny the allegations set forth in Paragraph “29” of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “30” of the Complaint.

31. Neither admit nor deny the allegations set forth in Paragraph “31” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

32. Neither admit nor deny the allegations set forth in Paragraph “32” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

33. Neither admit nor deny the allegations set forth in Paragraph “33” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

34. Neither admit nor deny the allegations set forth in Paragraph “34” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

35. Deny the allegations set forth in Paragraph “35” of the Complaint.

**AS TO THE CLASS MEMBERS**

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “36” of the Complaint

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “37” of the Complaint

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “38” of the Complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “39” of the Complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “40” of the Complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “41” of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “42” of the Complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “43” of the Complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “44” of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “45” of the Complaint.

46. Deny the allegations set forth in Paragraph “46” of the Complaint.

47. Deny the allegations set forth in Paragraph “47” of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “48” of the Complaint.

49. Neither admit nor deny the allegations set forth in Paragraph “49” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

50. Deny the allegations set forth in Paragraph “50” of the Complaint.

51. Deny the allegations set forth in Paragraph “51” of the Complaint.

52. Deny the allegations set forth in Paragraph “52” of the Complaint.

53. Deny the allegations set forth in Paragraph “53” of the Complaint.

54. Deny the allegations set forth in Paragraph “54” of the Complaint.

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56. Deny the allegations set forth in Paragraph “56” of the Complaint.

57. Deny the allegations set forth in Paragraph “57” of the Complaint.

58. Neither admit nor deny the allegations set forth in Paragraph “58” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “59” of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “60” of the Complaint.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “61” of the Complaint.

62. Neither admit nor deny the allegations set forth in Paragraph “62” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “63” of the Complaint.

64. Neither admit nor deny the allegations set forth in Paragraph “64” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

65. Neither admit nor deny the allegations set forth in Paragraph “65” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “66” of the Complaint.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “67” of the Complaint.

68. Neither admit nor deny the allegations set forth in Paragraph “68” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “69” of the Complaint.

70. Deny the allegations set forth in Paragraph “70” of the Complaint.

71. Deny the allegations set forth in Paragraph “71” of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “72” of the Complaint.

73. Deny the allegations set forth in Paragraph “73” of the Complaint.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “74” of the Complaint.

75. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “75” of the Complaint.

76. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “76” of the Complaint.

77. Deny the allegations set forth in Paragraph “77” of the Complaint.

78. Deny the allegations set forth in Paragraph “78” of the Complaint.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “79” of the Complaint.

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82. Deny the allegations set forth in Paragraph “82” of the Complaint.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “83” of the Complaint.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “84” of the Complaint.

85. Deny the allegations set forth in Paragraph “85” of the Complaint.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “86” of the Complaint.

87. Deny the allegations set forth in Paragraph “87” of the Complaint.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “88” of the Complaint.

89. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “89” of the Complaint.

90. Deny the allegations set forth in Paragraph “90” of the Complaint.

91. Deny the allegations set forth in Paragraph “91” of the Complaint.

92. Deny the allegations set forth in Paragraph “92” of the Complaint.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “93” of the Complaint.

94. Deny the allegations set forth in Paragraph “94” of the Complaint.

95. Deny the allegations set forth in Paragraph “95” of the Complaint.

96. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “96” of the Complaint.



97. Deny the allegations set forth in Paragraph “97” of the Complaint.

98. Deny the allegations set forth in Paragraph “98” of the Complaint.

99. Deny the allegations set forth in Paragraph “99” of the Complaint.

100. Deny the allegations set forth in Paragraph “100” of the Complaint.

101. Neither admit nor deny the allegations set forth in Paragraph “101” of the Complaint and respectfully refer the Court to the documents referenced therein for the contents and wording therein.

102. Deny the allegations set forth in Paragraph “102” of the Complaint.

103. Deny the allegations set forth in Paragraph “103” of the Complaint.

104. Deny the allegations set forth in Paragraph “104” of the Complaint.

105. Deny the allegations set forth in Paragraph “105” of the Complaint.

106. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “106” of the Complaint.

107. Deny the allegations set forth in Paragraph “107” of the Complaint.

108. Deny the allegations set forth in Paragraph “108” of the Complaint.

109. Deny the allegations set forth in Paragraph “109” of the Complaint.

110. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “110” of the Complaint.

111. Deny the allegations set forth in Paragraph “111” of the Complaint.

112. Deny the allegations set forth in Paragraph “112” of the Complaint.

**AS TO THE HARM TO THE CLASS AND SUBCLASS**

113. Deny the allegations set forth in Paragraph “113” of the Complaint.

114. Deny the allegations set forth in Paragraph “114” of the Complaint.

115. Deny the allegations set forth in Paragraph “115” of the Complaint.

116. Deny the allegations set forth in Paragraph “116” of the Complaint.

117. Deny the allegations set forth in Paragraph “117” of the Complaint.

118. Deny the allegations set forth in Paragraph “118” of the Complaint.

**AS TO THE CLASS ALLEGATIONS**

119. Deny the allegations set forth in Paragraph “119” of the Complaint.

120. Deny the allegations set forth in Paragraph “120” of the Complaint.

121. Neither admit nor deny the allegations set forth in Paragraph “121” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

122. Deny the allegations set forth in Paragraph “122” of the Complaint.

123. Deny the allegations set forth in Paragraph “123” of the Complaint.

124. Deny the allegations set forth in Paragraph “124” of the Complaint.

125. Deny the allegations set forth in Paragraph “125” of the Complaint.

126. Deny the allegations set forth in Paragraph “126” of the Complaint.

127. Deny the allegations set forth in Paragraph “127” of the Complaint.

128. Deny the allegations set forth in Paragraph “128” of the Complaint.

**AS TO COUNT #1**

129. In response to Paragraph “129” of the Complaint, the Mel Harris Defendants restate, reassert and incorporate by reference all responses in Paragraphs “1” to “128.”

130. Neither admit nor deny the allegations set forth in Paragraph “130” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

131. Neither admit nor deny the allegations set forth in Paragraph “131” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

132. Neither admit nor deny the allegations set forth in Paragraph “132” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

133. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “133” of the Complaint.

134. Deny the allegations set forth in Paragraph “136” of the Complaint.

135. Deny the allegations set forth in Paragraph “135” of the Complaint.

136. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “136” of the Complaint.

137. Deny the allegations set forth in Paragraph “137” of the Complaint.

138. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph “138” of the Complaint.

139. Deny the allegations set forth in Paragraph “139” of the Complaint.

140. Deny the allegations set forth in Paragraph “140” of the Complaint.

**AS TO COUNT #2**

141. In response to Paragraph “141” of the Complaint, the Mel Harris Defendants restate, reassert and incorporate by reference all responses in Paragraphs “1” to “140.”

142. Neither admit nor deny the allegations set forth in Paragraph “142” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

143. Neither admit nor deny the allegations set forth in Paragraph “143” of the Complaint, which set forth conclusions of law, and respectfully refer all questions of law to the Court.

144. Deny the allegations set forth in Paragraph “144” of the Complaint.

145. Deny the allegations set forth in Paragraph “145” of the Complaint.

146. Deny the allegations set forth in Paragraph “146” of the Complaint.

147. Deny the allegations set forth in Paragraph “147” of the Complaint.

148. Deny the allegations set forth in Paragraph “148” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

149. The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

150. Plaintiff has suffered no actual damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

151. Assuming, *arguendo*, that the Resurgent Defendants violated a statute alleged in the Complaint, which presupposition the Resurgent Defendants deny, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

152. Any damages sustained by Plaintiff were a result of the acts or omissions of third persons or entities over whom the Resurgent Defendants exercised no control.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

153. The claims in the Complaint are barred, in whole or in part, by the applicable statute(s) of limitations.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

154. Any alleged false statements made by the Resurgent Defendants (such falsity being expressly denied) were, nonetheless, not material and, as such, not actionable.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

155. Plaintiff lacks standing to maintain this action.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

156. The claims for relief alleged in the Complaint are barred, in whole or in part, by the *Rooker-Feldman* and/or abstention doctrines.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

157. This action, in whole or in part, may not be maintained as a class action pursuant to Fed. R. Civ. P. 23.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

158. The Resurgent Defendants are not vicariously liable for any alleged violation of the FDCPA.

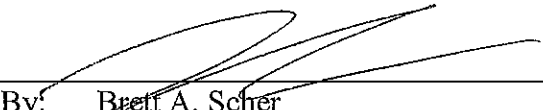
**DEFENSES RESERVED**

159. The foregoing affirmative defenses are raised by the Resurgent Defendants without waiver of any other defenses that may develop during the course of discovery and the Resurgent Defendants reserve their right to amend and/or supplement their Answer to assert such additional defenses as they become available.

WHEREFORE, the Resurgent Defendants demand judgment dismissing the Complaint and each and every cause of action alleged therein and for such other, further and different relief as to this Court may seem just and proper, including costs and attorney's fees.

Dated: Woodbury, New York  
August 7, 2013

Very truly yours,  
KAUFMAN DOLOWICH VOLUCK & GONZO LLP

  
By: Brett A. Scher  
Yale Pollack  
Attorneys for Defendants  
RESURGENT CAPITAL SERVICES, LP,  
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ND: 4824-4734-3125, v. 1